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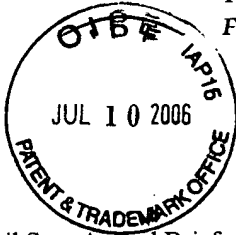
[Stamp: JUL 10 2006 PATENT & TRADEMARK OFFICE]

July 6, 2006

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Re: Appellant: Robert M. Zeidman
        Title: Apparatus and Method for Providing History Data to Sellers About Internet
                         Auction and Marketplace
        Serial No.:   09/972,264   Filing Date: October 9, 2001
        Examiner: Haq, Naeem U.   Group Art Unit: 3625
        Docket No.:   M-16231 US

Dear Sir:

Transmitted herewith are the following documents in the above-identified application:

(1) Return Receipt Postcard;
(2) This Transmittal Letter (1 page in duplicate); and
(3) Appeal Brief (pages 1-9) including Claims Appendix (pages 10-13) (13 pages).

☒   The fee has been calculated as shown below:

CLAIMS AS AMENDED

	Claims Remaining *After* Amendment		Highest No. Previously Paid For		Present Extra		Rate		Additional Fee
Total Claims	11	Minus	20	=	0	x	$25.00	$	00.00
Independent Claims	1	Minus	5	=	0	x	$100.00	$	00.00
☐ Fee of _____ for the first filing of one or more multiple dependent claims per application								$	
☒ **Fee for Filing a Brief in Support of an Appeal**								$	250.00
☐ Fee for Extension of Time								$	0.00
Total additional fee for this Amendment:								$	

☒   Conditional Petition for Extension of Time: If an extension of time is required for timely filing of the enclosed document(s) after all papers filed with this transmittal have been considered, an extension of time is hereby requested.

☒   Please charge our Deposit Account No. 50-2257 in the amount of $ 250.00

☒   Also, charge any additional fees required and credit any overpayment to our Deposit Account No. 50-2257.

                                                   Total: $ 250.00

Respectfully submitted,

[Signature]

Edward C. Kwok
Attorney for Applicant
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I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Mail Stop Appeal Brief – Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on July 6, 2006.

_____   7/6/06
Attorney for Applicant(s)   Date of Signature

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.:	09/972,264	Filing Date:	October 9, 2001
Confirmation No.:	3915		
First Named Inventor:	Robert Marc Zeidman		
Examiner:	Haq, Naeem U.	Art Unit:	3625
Attorney Docket No.:	M-16231 US		

San Jose, California
July 6, 2006

Mail Stop Appeal Briefs - Patents
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APPEAL BRIEF

Dear Sir:

Pursuant to 37 CFR § 41.37, Appellant files this Appeal Brief in support of the

Notice of Appeal filed on May 9, 2006.

Real Party in Interest

The inventor, Robert M. Zeidman, is the real party in interest.

Related Appeals and Interference

There is no other prior or pending appeal, interference, judicial proceeding known

to appellant or appellant's legal representative which may be related to, directly affect or

be directly affected by, or have a bearing on the Board's decision in the pending appeal.

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Status of Claims

Claims 1-11 are pending. Claims 1-6 are rejected and appealed. Claims 7-11 are withdrawn.

Status of Amendments

Subsequent to the Final Office Action of January 27, 2006, Appellant filed an Amendment on March 20, 2006. In response to the Appellant's Amendment, the Examiner issued an Advisory Action on April 19, 2006 advising that the Examiner has considered Appellant's request for reconsideration.

Summary of Claimed Subject Matters

Independent Claim 1 recites an apparatus for allowing a seller of items to gather data from e-commerce websites. One embodiment of the present invention is illustrated in Figures 2-4 and described beginning at page 2, line 32 to page 5, line 4, for example. As illustrated in Figure 2, and discussed at page 2, lines 32-35, website server computer 105 is connected to the Internet 103. Server computer 105 includes a database for storing data about previous sales of said items on one or more of the e-commerce websites (e.g., page 3, lines 1-3); database management software is used for maintaining said database, A data gathering software visits e-commerce websites to compile the data about previous sales (e.g., page 2, line 37 to page 3, line 1 and lines 3-7). Application software allows a user to request data about previous sales from the database (Figure 4, beginning at page 4, line 38 to page 5, line 12).

Grounds of Rejection

1.   The Examiner rejected Claims 1-4 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 6,484,176 ("Sealand"), in view of Chapter 1 of the book "Database Management Systems," ("Ramakrishnan"), and further in view of the article "Intelligent Agents: a Primer" ("Searcher").

2.   The Examiner rejected Claims 5-6 under 35 U.S.C. § 103(a) as being unpatentable over Sealand, in view of Ramakrishnan, and further in view of Searcher and the Examiner's Official Notice.

Arguments

1.   Rejection of Claims 1-4

In the Final Office Action of January 27, 2006, the Examiner rejected Claims 1-4 under 35 U.S.C. § 103(a) as being unpatentable over Sealand in view of Ramakrishnan and further in view of Searcher. The Examiner states, in pertinent part:

> ... The cited prior art does not teach data gathering software that visits the servers to compile said data about previous sales. However, Searcher discloses intelligent agents (i.e. agent software) for searching various websites to obtain data for commercial transactions (page 15, lines 19-22) based on user-specified or agent specified rules (page 5, lines 23-27). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Searcher into the invention of the cited prior art. One of ordinary skill in the art would have been motivated to do so in order to automate the searching process and make the digital world less overwhelming, as taught by Searcher (page 1; page 3, lines 15-21). ...

In response to the Examiner's rejection, Appellant explained in the Amendment of January 27, 2006 that, as amended, Appellant's Claim 1 recites data gathering software for updating the database in the website server:

> 1. An apparatus for allowing a seller of items to gather data from e-commerce websites, comprising:
>
> a. a website server computer connected to the Internet, including a database for storing data about previous sales of said items on one or more of the e-commerce websites,
>
> b. database management software for maintaining said database,
>
> c. data gathering software that visits the e-commerce websites to compile said data about said previous sales, and
>
> d. application software for allowing a user to request from the database said data about said previous sales.

Appellant further explained that, with data gathering software that is capable of visiting and collecting data from e-commerce websites, the database in the website server provides up-to-date information about even the most recent sales. Appellant then pointed out to the Examiner that, in combining the teachings Sealand and Searcher, the Examiner has disregarded the expressed teachings of Sealand. Specifically, Sealand teaches that its real estate database, whose access is strictly restricted to a specifically qualified group (i.e., real estate and other professionals) under secured conditions, is updated only using information provided by its subscribing individual real estate agencies:

> In the residential segment of the real estate industry, computerized real estate information databases, known as multiple listing service (MLS) databases, have become the premier source of centralized real estate listing information.

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MLS databases enjoy widespread acceptance throughout the industry. <u>Individual real estate agencies subscribe to the MLS and provide information about properties both listed and sold. Access is ordinarily restricted to licensed real estate professionals, appraisers, and lending institutions.</u> ...

<u>In the described embodiment, four preferences need be specified, a Department of Real Estate (DRE) license number 61, a password 62,</u> a phone number 63 and a modem initialization string 64, although other preferences are also feasible. Upon the completion of the specification of preferences, the preferences can be saved by pressing the virtual "Save" button 65 or discarded by pressing the virtual "Cancel" button 66....

(Sealand, at col. 1, lines 15-23 and col. 7, lines 23-27; emphasis added)

Thus, the designer of Sealand's real estate databases deems it necessary for its purpose to restrict both the authority to update the databases and the authority to access the databases. Appellant explained that the Examiner's combination of Sealand's and Searcher's teachings, as quoted above, would require that Sealand's real estate databases be open to accesses by data gathering software, and be allowed to be updated by data gathering software using data collected from rival real estate databases. In other words, the Examiner's combination would require a modification that renders Sealand unsatisfactory for its expressed purpose of strict control in both access and update authorities. Appellant therefore notes that the MPEP, at § 2143.01, concludes from such a result that there is no motivation or suggestion to make the Examiner's combination of teachings:

V. THE PROPOSED MODIFICATION CANNOT RENDER THE PRIOR ART UNSATISFACTORY FOR ITS INTENDED PURPOSE

If proposed modification would render the prior art invention being modified unsatisfactory for its intended

purpose, then there is no suggestion or motivation to make
the proposed modification. *In re Gordon*, 733 F.2d 900,
221 USPQ 1125 (Fed. Cir. 1984)...

Following the MPEP, Appellant therefore concluded that the Examiner's

combination of Sealand's and Searchers teachings fails for lack of suggestion or

motivation and thus asked for the Examiner's reconsideration of Claims 1-6.

In response to Appellant's arguments, the Examiner states in the Advisory Action

of April 19, 2006:

> Applicant's arguments have been considered, but
> they are not persuasive. Applicant has argued that there is
> no motivation to combine Searcher with the prior art
> because the prior art (i.e. Sealand) teaches that access to the
> real estate database is restricted; and, therefore the
> proposed modification would render the prior art
> unsatisfactory. The Examiner respectfully disagrees with
> these arguments. Searcher discloses that an intelligent
> agent can be programmed to contain sensitive information
> such as a credit card number (page 1, "Security").
> Therefore Searcher's disclosure is consistent with the
> teachings of prior art. For this reason, the Examiner
> maintains the art rejection.

Appellant respectfully submits that the Examiner has entirely missed the

significance of Sealand's teachings regarding its proprietary database. As explained by

Sealand at col. 1, lines 20-23 and at col. 7, lines 20-27, Sealand's purpose is to restrict the

information in the database to the qualified group (i.e., the intermediaries in the real

estate market), and hence to exclude the information from others:

> ... Individual real estate agencies subscribe to the
> MLS and provide information about properties both listed
> and sold. Access is ordinarily restricted to licensed real
> estate professionals, appraisers, and lending institutions.

<p style="text-align:center">*   *   *</p>

Referring to FIG. 5, a screen shot of a preferences specification screen 60 generated, by way of example, by the method 41 of FIGS. 4A and 4B is shown. In the described embodiment, four preferences need be specified, a Department of Real Estate (DRE) license number 61, a password 62, a phone number 63 and a modem initialization string 64...

(emphasis added)

In contrast, as recited in the preamble of Appellant's Claim 1, the recited purpose of Appellant's invention is 1 to provide "an apparatus for <u>allowing a **seller** of items to gather data from e-commerce websites.</u>" (emphasis added). In other words, whereas Sealand's purpose is to make the seller get the privileged sales information exclusively through the intermediaries, Appellant's invention enables such information to be made <u>directly</u> available to the seller. Naturally, Appellant's invention would be detrimental to Sealand's purpose. Thus, the Examiner's proposed modification in his rejection is fundamentally adverse to Sealand's purpose. The Examiner's argument that the intelligent agent may carry sensitive information, such as a credit card number, is therefore totally irrelevant. A credit card number would allow the real estate professional, but still not the seller, to get access to the Sealand database. Therefore, even if Sealand is modified in the manner suggested by the Examiner, the combination would achieve only "an apparatus for allowing an **intermediary** of items to gather data... " and not "an apparatus for allowing a **seller** of items to gather data from e-commerce websites..." as required in Appellant's Claims 1-4. Accordingly, Appellant respectfully submits that Claims 1-4 are allowable over Sealand, in view of Ramakrishnan and Searcher.

2.   Rejection of Claims 5-6

In the Final Office Action of January 27, 2006, the Examiner rejected Claims 5-6

under 35 U.S.C. § 103(a) as being unpatentable over Sealand, in view of Ramakrisnan

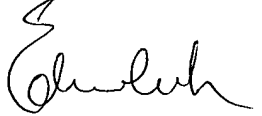and further in view of Searcher and the Examiner's Official Notice. The Examiner states:

> Referring to claims 5 and 6: The cited prior art
> teaches or renders obvious all of the limitations of claims 2
> and 3 as noted above. The.cited prior art does not expressly
> disclose establishing a network connection for enabling the
> agent software to communicate over the Internet with an e-
> commerce website. However, Official Notice is taken that
> it is old and well known-in the art to establish a network
> connection for providing Internet connectivity for any
> software. Therefore it would have been obvious to one of
> ordinary skill in the art, at the time the invention.was made,
> to incorporate a network connection for the agent software
> in the cited prior art. One of ordinary skill in the art would
> have been motivated to do so in order to allow the agent
> software to communicate over the Internet.

As explained in Appellant's Amendment of January 27, 2006 and above, the

Examiner's combination with respect to Claims 1-4 fails for lack of suggestion or

motivation to combine the teachings of Sealand and Searcher. As the Examiner's

Official Notice does not cure the failure to suggest or motivate the Examiner's

combination of the other prior art, the Examiner's Official Notice is therefore irrelevant.

Therefore, as Claims 5-6 each depend from Claim 1, Claims 5-6 are each allowable over

the teachings of Sealand, Ramakrisnan and Searcher and the Examiner's Official Notice.

Conclusion

For the reasons stated above, Appellant submits that all elected claims (i.e.,

Claims 1-6) are allowable and the Examiner's rejections of these claims should be

reversed.

If the Examiner or the Board has any question regarding the above, it is

respectfully requested to that the undersigned Attorney for Applicant be telephoned at

408-392-9250.

<table>
<tr><td>
I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on July 6, 2006.

_____   7/6/2006
Attorney for Applicant(s)   Date of Signature
</td></tr>
</table>

Respectfully submitted,

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<u>Claims Appendix</u>

1.   (Appealed) An apparatus for allowing a seller of items to gather data from e-commerce websites, comprising:

    a. a website server computer connected to the Internet, including a database for storing data about previous sales of said items on one or more of the e-commerce websites,

    b. database management software for maintaining said database,

    c. data gathering software that visits the e-commerce websites to compile said data about said previous sales, and

    d. application software for allowing a user to request from the database said data about said previous sales.

2.   (Appealed) The apparatus of claim 1, wherein said data gathering software comprises agent software that, at regular intervals, searches said e-commerce websites to obtain said data on about said previous sales.

3.   (Appealed) The apparatus of claim 1, wherein said data gathering software comprises agent software that, at times determined by a seller, searches said e-commerce websites to obtain said data about said previous sales.

4.   (Appealed) The apparatus of claim 1, further including network connection software to enable the application software to communicate over the Internet with a seller at a remote computer.

5.   (Appealed) The apparatus of claim 2, further including network connection software to enable the agent software to communicate over the Internet with an e-commerce website.

6.   (Appealed) The apparatus of claim 3, further including network connection software to enable the agent software to communicate over the Internet with an e-commerce website.

7.   (Withdrawn) A method for allowing a seller of items to gather data from e-commerce websites in order to optimize the sale of similar items, comprising the following steps:

    a. accepting a detailed description from said seller about said items for sale,

    b. examining a database for information about similar items that have previously sold at e-commerce websites,

    c. determining that said database contains information about said similar items and extracting said information,

    d. presenting said information to said seller.

8.   (Withdrawn) The method of claim 7 including: a. querying said user for a format in which said information is to be presented and b. presenting said information in accordance with said format.

9.   (Withdrawn) A method for allowing a seller of items to gather data from

e-commerce websites in order to optimize the sale of similar items, comprising the following steps:

a. accepting a detailed description from said seller about said items for sale,

b. examining a database for information about similar items that have previously sold at e-commerce websites,

c. determining that said database does not contain information about said similar items,

d. starting agent software to search e-commerce websites to gather information about said similar items that have previously been sold at said e-commerce websites, and

e. storing said information that has been gathered by said agent software into said database.

10.   (Withdrawn) A method for updating a database with data from e-commerce websites about the sale of various items, comprising the following steps:

a. starting agent software at regular intervals to search e-commerce websites to gather information about said various items that have previously been sold at said e-commerce websites and

b. storing said information that has been gathered by said agent software into a database.

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11.   (Withdrawn) A method for updating a database with data from e-commerce websites about the sale of various items, comprising the following steps:

a. providing a detailed description of an item,

b. providing a set of search parameters,

c. providing a list of e-commerce sites,

d. searching said list of e-commerce sites according to said search parameters,

e. retrieving information from said e-commerce sites, using said search parameters and said detailed description, about said item, and

f. storing said information into a database.